

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 6, 2008

IN RE: S.M.R. AND K.M.R.

**Appeal from the Juvenile Court for Davidson County
No. 76092 and 76740 Betty Adams Green, Judge**

No. M2008-01221-COA-R3-PT - Filed November 18, 2008

Mother appeals the termination of her parental rights. The trial court terminated Mother's rights on the grounds of persistent conditions, abandonment by failure to provide a suitable home, substantial noncompliance with the permanency plan, and mental incapacity to care for her children. The trial court also determined that termination was in the best interests of the children. Mother challenges the sufficiency of the evidence and contends the Department failed to exert reasonable efforts. She also contends the Department of Children's Services had a conflict of interest because it employed one of the children's foster parents. We have determined the Department made reasonable efforts to aid Mother, that the evidence clearly and convincingly supported termination of Mother's parental rights on the grounds of persistent conditions, abandonment by failure to provide a suitable home, substantial noncompliance with the permanency plan, and mental incapacity to care for her children, and that termination was in the children's best interests. As for Mother's claim of a conflict of interest, the appearance of a conflict was remedied by the outsourcing of Mother's case management to an independent agency. We therefore affirm the termination of Mother's parental rights.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Laura A. Stewart, Nashville, Tennessee, for the appellant, T.L.R.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Joshua Davis Baker, Assistant Attorney General, for the appellee, State of Tennessee, Department of Children's Services.

Susan Piper McGowan, Guardian ad Litem, Nunnally, Tennessee.

OPINION

The two minor children, S.M.R. and K.M.R., were removed from Mother's care on November 9, 2004 after the Department of Children's Services investigated a report of suspicious bruising on the back of eighteen-month-old S.M.R. When Jennifer Brown, a Department investigator, went to the home of Mother, she discovered large bruises on S.M.R.'s back, and K.M.R. was dirty and wearing little clothing. Ms. Brown attempted to remove the children, but police assistance was required due to Mother's extreme uncooperativeness. The children were placed in foster care soon thereafter, where they have remained ever since.

The first permanency plan was entered on November 29, 2004, the goal of which was reunification. Under the parenting plan, Mother was required to complete a clinical interview and attend and participate in anger management classes or counseling, parenting classes, and a domestic violence intervention program. She was also required to participate in individual counseling and to acknowledge her role in causing the injuries to S.M.R. To address the unhealthy living situation, Mother was required to seek medical care to get rid of lice. She was also required to receive assistance from homemaker services.

On December 15, 2004, an agreed order was entered which found S.M.R. and K.M.R. dependent and neglected children and abused children. The order identified Mother as the perpetrator of the abuse of S.M.R. Mother subsequently pled guilty to abusing S.M.R. and was incarcerated from June 2005 to August 2005 for that offense.

Mother's first caseworker was Tammy Hardy, who worked with Mother from November 2004 until October 21, 2005. During Ms. Hardy's tenure, she enrolled Mother in parenting classes and anger management classes. She also referred Mother to Annie Hamilton at Living Well Ministries, who was to act as her mentor. Unfortunately, Mother was reluctant to enter counseling or to acknowledge her role in the abuse of S.M.R. Ms. Hardy was eventually able to get Mother into counseling at Centerstone; however, Mother's attendance was sporadic.

While Ms. Hardy was serving as Mother's case worker, it was discovered that Mother had begun a relationship with a convicted sexual offender and that she was pregnant with his child.¹

Mother's next caseworker was Sherry Porter, who worked with her from October 2005 until March 13, 2006. Upon being assigned to Mother's case, Ms. Porter discussed the requirements of the permanency plan. She also discussed with Mother the Department's concerns relating to

¹The child fathered by the sexual offender was born in October 2005, was adjudicated dependent and neglected in January 2006, and was removed from the home upon a finding that Mother was unable to parent him, her history of abuse of S.M.R., and her failure to comply with services offered her by the Department in conjunction with S.M.R. and K.M.R. The child fathered by the sexual offender, born in October 2005, is not at issue in this action.

Mother's continuing relationship with the sexual offender. The discussions had little effect on Mother's relationship with the man.

During Ms. Porter's tenure, Mother's house continued to be unsanitary, so Ms. Porter made another referral for homemaker services. Ms. Porter also provided Mother with therapeutic visits from two independent social workers who had contracted with the Department. Both social workers found Mother's home to be extremely dirty. Floors were sticky, food was dropped and left on the floor, and ashtrays overflowing with cigarette butts were left scattered around the living room. One social worker observed Mother allow a homeless couple to take a shower in her home and observed a crack-pipe in the residence on another visit. Based on her observations, the social worker recommended that Mother not receive unsupervised visits.

A new permanency plan was entered on January 17, 2006. The requirements of this plan included engaging in individual counseling, completing a neurological evaluation to explore head injuries due to violence, having regular medication assessments and taking medications as prescribed, completing a mental health assessment, and not allowing a sexual predator to reside in her home or to help her raise her children.

In April 2006, Mother was incarcerated for contempt of court due to her failure to pay court ordered child support.

In May 2006, Mother's mentor at Living Well Ministries expressed concern, for the first time, regarding the fact that one of the foster parents was employed by the Department.² The Department had no prohibition against employees serving as foster parents; nevertheless, due to Mother's expressed concern of bias and to resolve any potential conflict of interest, her case management was delegated to an independent agency, Youth Villages.

Ginger Lynn, an employee of Youth Villages, became Mother's caseworker in May 2006. Mother continued receiving her counseling from Centerstone, and Ms. Lynn took her to a psychiatric appointment and a doctor's appointment. Additionally, she assisted Mother in finding employment. Ms. Lynn also met with Mother twice a week, with the children present once a week, and during these visits tried to assist Mother with supervision, discipline, safety, and cleanliness. Ms. Lynn stated that Mother did not make any progress during these visits. She also addressed the threat Mother's boyfriend posed to the children; however, Mother refused to believe that her boyfriend was dangerous, despite being shown documentation of his sexual offense, and receiving warnings from his mother and sister.

Mother's case management was switched to Colby Stough at Youth Villages in September 2006. Ms. Stough provided supervised visits between Mother and the children and tried to help

²May 2006 was the first time anyone had expressed concern, despite testimony that the foster parent's employment with the Department was discussed with Mother at the initial Child and Family Team Meeting in November 2004.

Mother with safety, discipline techniques, anger management, cleanliness, and nutrition. Mother was also provided therapeutic counseling and taken to Centerstone for an intake and appointments. Despite the efforts of Ms. Stough, Mother still was not making significant progress. While she did undergo a neuropsychological evaluation and was complying with the terms of her criminal probation, she still failed to address other requirements under the permanency plan. Mother still was not receiving individual or group therapy, had not completed a medication assessment, was not taking her medications as prescribed, and still had not acknowledged the circumstances of S.M.R.'s abuse. Mother was incarcerated for the second time in November 2006 for her failure to pay child support.

A third permanency plan was entered in January 2007. The requirements of this plan were substantially the same as the previous ones. The requirements focused on Mother receiving counseling, attending domestic violence classes and support groups, undergoing a parenting assessment, and taking her medication. Mother was also required to find employment, support her children, and discontinue any relationship with a sexual offender.

Between March 2007 and May 2007, Mother underwent testing with Dr. Berryman, an expert in parenting assessments and mental health diagnosis. After her clinical interview with Mother, observation of one visit between Mother and the children, and reviewing reports from other sources, Dr. Berryman concluded that Mother possessed some characteristics of the Axis I Bipolar disorder, and that she experienced anxiety and depression. Dr. Berryman also stated that she diagnosed Mother with a personality disorder, which required long-term treatment, and which no medication could overcome. Dr. Berryman believed that at the time of the evaluation Mother did not possess the requisite skills to safely and effectively parent her two children.

Mother's case was assigned to Elaine Garner, in May 2007. A final permanency plan was entered on May 21, 2007 with adoption as the sole goal. The new plan had the same requirements as the previous plan, aside from the addition of requirements to implement the recommendations of Dr. Berryman and request that Mother limit the number of outside persons who had access to her home. At this time, the children had been in state custody for almost three years, and Mother had demonstrated little achievement. Ms. Garner counseled Mother on home safety, child supervision, and budgeting. She also supervised visits between Mother and the children. Ms. Garner stated that she saw no improvement in Mother's parenting abilities, that she failed to discipline the girls, failed to practice portion control with the children, and did not show affection towards the children.

On August 9, 2007, the children's guardian ad litem filed a petition to terminate the parental rights of Mother, Mother's husband, and K.M.R.'s father. The petition cited the grounds of persistent conditions and mental incompetence, and stated that termination was in the best interests of the children. The petition cited reasons such as Mother's conviction for child abuse of S.M.R., Mother's ongoing relationship with a sexual offender, Mother's mental health condition and her failure to obtain help for it, and Mother's failure to pay child support as reasons which demonstrated that termination was in the children's best interests.

The Department filed an Intervening Petition for Termination of Parental Rights on August 23, 2007 alleging the grounds of abandonment for failure to support or visit, abandonment for failure to establish a suitable home, substantial noncompliance with the permanency plan, and persistent conditions. The Department also alleged that termination of Mother's rights was in the best interests of the children due to Mother's failure to effect lasting adjustments after reasonable efforts, Mother's physical abuse and neglect of the children, the unhealthy and unsafe physical environment, Mother's mental and emotional status, and Mother's failure to pay child support.

Trial was held on December 21, 2007, and February 29, March 31, April 11, and May 6 of 2008. On May 21, 2008, the court entered an order finding the Department had proven four grounds upon which to terminate Mother's parental rights: persistent conditions, abandonment by failure to provide a suitable home, mental incompetence to care for the children, and substantial noncompliance with the requirements of the permanency plan. The court also found that termination was in the children's best interests due to Mother's failure to make an adjustment of circumstances, conduct, or conditions, her failure to make a lasting adjustment after reasonable efforts by social services, the lack of a meaningful relationship between Mother and her children, the physical abuse of S.M.R. by Mother, and Mother's "long-standing, unresolved, untreated mental health issues." This appeal followed.

ISSUES

Mother contends the evidence is insufficient to support the grounds of mental incompetence, substantial noncompliance with the permanency plan, and abandonment.³ She also contends the Department did not make reasonable efforts in helping reunite her with her children, and that termination is not in the children's best interest. She further contends the Department had a conflict of interest because one of its employees was one of the foster parents.

ANALYSIS

Parents have a fundamental right to the care, custody and control of their children. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Hawk v. Hawk*, 855 S.W.2d 573, 577 (Tenn. 1993). This right is superior to the claims of other persons and the government, yet it is not absolute. *In re S.L.A.*, 223 S.W.3d 295, 299 (Tenn. Ct. App. 2006).

Parental rights may be terminated only where a statutorily defined ground exists. Tenn. Code Ann. § 36-1-113(c)(1); *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re M.W.A.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). The petitioner has the burden of proving that there exists a statutory ground for termination, such as abandonment or failing to remedy persistent conditions that led to the removal of the child. Tenn. Code Ann. § 36-1-113(c)(1); *Jones*, 92 S.W.3d at 838.

³The trial court also found that Mother's parental rights should be terminated on the ground of persistent conditions. Although Mother's brief does not expressly contest the propriety of this finding, we will analyze the issue upon the assumption this was an oversight.

Only one ground need be proved, so long as that ground is proved by clear and convincing evidence. See *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003). In addition to proving one of the grounds for termination, the petitioner must prove that termination of parental rights is in the child's best interest. Tenn. Code Ann. § 36-1-113(c)(2); *In re F.R.R.*, 193 S.W.3d 528, 530 (Tenn. 2006); *In re A.W.*, 114 S.W.3d 541, 544 (Tenn. Ct. App. 2003); *In re C.W.W.*, 37 S.W.3d 467, 475-76 (Tenn. Ct. App. 2000) (holding a court may terminate a parent's parental rights if it finds by clear and convincing evidence that one of the statutory grounds for termination of parental rights has been established and that the termination of such rights is in the best interests of the child). Therefore, a court may terminate a person's parental rights if (1) the existence of at least one statutory ground is proved by clear and convincing evidence and (2) it is clearly and convincingly established that termination of the parent's rights is in the best interest of the child. Tenn. Code Ann. § 36-1-113(c); *In re Adoption of A.M.H.*, 215 S.W.3d 793, 810 (Tenn. 2007); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

Whether a statutory ground has been proved by the requisite standard of evidence is a question of law to be reviewed *de novo* with no presumption of correctness. *In re B.T.*, No. M2007-01607-COA-R3-PT, 2008 WL 276012, at *2 (Tenn. Ct. App. Jan. 31, 2008) (no Tenn. R. App. P. 11 application filed) (citing *In re Adoption of A.M.H.*, 215 S.W.3d at 810). The issue of substantial noncompliance with the requirements of a permanency plan is a question of law; therefore, it is reviewed *de novo* with no presumption of correctness. *In re Valentine*, 79 S.W.3d at 546 (citing *Langschmidt v. Langschmidt*, 81 S.W.3d 741, 744-45 (Tenn. 2002)).

A.

GROUND FOR TERMINATION

I. MENTAL INCAPACITY

We will first address the trial court's finding that Mother is incompetent to adequately provide for the further care and supervision of the children because her mental condition is so impaired and is so likely to remain so that it is unlikely she will be able to assume or resume the care of and responsibility for her children in the near future.

Tennessee Code Annotated §36-1-113(g)(8)(B) provides that a parent's rights may be terminated if it determines on the basis of clear and convincing evidence that:

- (i) The parent . . . is incompetent to adequately provide for the further care and supervision of the child because the parent's . . . mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future; and
- (ii) That termination of parental or guardian rights is in the best interest of the child;

Tenn. Code Ann. § 36-1-113(g)(8)(B)(i)-(ii). No proof of willfulness on the part of the parent in the failure to care for the child is required to establish this ground. Tenn. Code Ann. § 36-1-113(g)(8)(C). “The elimination of this requirement serves to protect children from harm caused by a parent who is incapable of safely caring for them.” *In re D.A.P.*, No. E2007-02567-COA-R3-PT, 2008 WL 2687569, at *5 (Tenn. Ct. App. July 9, 2008) (citing *In re D.C.C.*, No. M2007-01094-COA-R3-PT, 2008 WL 588535, at *9 (Tenn. Ct. App. Mar. 3, 2008)); *see also State of Tennessee Dep’t of Children’s Services v. Smith*, 785 S.W.2d 336, 338 (Tenn. 1990) (stating that “[o]nly where termination of parental rights is predicated upon the abandonment of the child by the parents has the legislature required the trier of fact to find that the acts of the parents were willful”). “If willfulness were required in petitions based upon mental disability, ‘[a]n obvious result . . . is to condemn a child, whose parents are unfit to properly care for the child because of mental illness, to a life in serial foster homes without any possibility of a stable, permanent home.’” *Id.* (quoting *Smith*, 785 S.W.2d at 338).

Mother was previously diagnosed with bipolar disorder, she experienced anxiety and had a “significant” depressive disorder. Dr. Berryman additionally diagnosed Mother with an Axis II personality disorder NOS (not otherwise specified), meaning that Mother possessed dysfunctional characteristics such as the inability to trust, make long-term relationships, or follow rules. As Dr. Berryman explained, persons with this personality disorder will continue to behave as they see fit and they will not listen to the directions of others. Dr. Berryman further explained the only way to help would be “intensive long-term treatment” with a person who is “willing to make changes,” and even then it is difficult.

Mother argues that this ground is reserved for situations where a parent has severe mental retardation or a condition for which “no amount of intervention can assist.” However, we have affirmed the termination of a parent’s rights based on a diagnosis of adjustment disorder with anxiety and depressed mood, as well as dependent personality disorder. *See Dep’t of Children’s Servs. v. M.R.N.*, No. M2006-01705-COA-R3-PT, 2007 WL 120038, at *10 (Tenn. Ct. App. Jan. 17, 2007). As we explained:

With respect to Mother’s mental incompetence, we also find that the evidence clearly and convincingly supports the trial court’s finding that DCS established this ground for termination. Dr. Monroe, a clinical psychologist, met with Appellant at the request of DCS on three separate occasions to assess her mental capacity and ability to parent her children. His undisputed testimony supports the trial court’s finding that Mother suffered from adjustment disorder with anxiety and depressed mood, as well as dependent personality disorder. Dr. Monroe testified that her dependent tendencies caused her to be more prone to engage in and endure abusive relationships. Furthermore, he testified that Mother was often unable to focus and multi-task in her daily life, and that her tendencies to avoid conflict or confrontation kept her from consistently disciplining her children or establishing appropriate boundaries.

Id. The diagnosis of Mother's personality disorder is similar to the diagnosis in *M.R.N.* Here, Mother engages in unhealthy relationships, and her disorder makes it difficult for establishing appropriate boundaries. Testimony demonstrates that Mother has received parenting classes and counseling from social workers in regards to proper parenting, and yet Mother disregards this instruction and continues to be unable to provide a stable home environment. Dr. Berryman testified that due to Mother's personality disorder, she disregards instruction, cannot follow rules, and will continue to behave how she sees fit. The record demonstrates that over the many years that her children have been in custody, Mother has continuously refused to receive regular counseling or take her medications. Dr. Berryman stated that the only course of treatment for a personality disorder is long-term counseling, and in her opinion, counseling would only improve Mother's prognosis.

Based on the diagnosis by Dr. Berryman, Mother's medical history, and her aversion to counseling, we find the evidence sufficient to affirm the finding that Mother is incompetent to adequately provide for the care and supervision of her children pursuant to Tennessee Code Annotated §36-1-113(g)(8)(B).

II. SUBSTANTIAL NONCOMPLIANCE WITH THE PERMANENCY PLAN

Mother makes two arguments in relation to this ground. First, she argues that termination under this ground was not supported by the evidence. Secondly, she argues that the State did not make reasonable efforts in helping reunite her with her children.

When terminating on the ground of substantial noncompliance with the permanency plan, the Department must demonstrate that it made reasonable efforts to reunite a child with his parent. Tenn. Code Ann. § 37-1-166(b); *see also In re B.B.*, No. M2003-01234-COA-R3-PT, 2004 WL 1283983, at *9 (Tenn. Ct. App. June 9, 2004) (citing *In re C.M.M.*, No. M2003-01122-COA-R3-PT, 2004 WL 438326, at *7-8 (Tenn. Ct. App. Jan. 17, 2008)). The Department has the burden to prove by clear and convincing evidence that it exercised reasonable care and diligence to provide services reasonably necessary to meet the parents' needs and to assist them in fulfilling their obligations under the permanency plans. *In re Valentine*, 79 S.W.3d at 547; *In re C.M.M.*, 2004 WL 438326, at *8; Tenn. Code Ann. § 36-1-113(c). This burden requires the Department to present sufficient evidence to enable us to conclude, without serious or substantial doubt, that the efforts were reasonable under the circumstances. *In re Valentine*, 79 S.W.3d at 547; *In re C.D.B.*, 37 S.W.3d 925, 927 (Tenn. Ct. App. 2000); *see Walton v. Young*, 950 S.W.2d 956, 960 (Tenn.1997).

Additionally, it must be shown that the goals and requirements set forth in the permanency plans were not arbitrary or unreasonable, but were directed toward remedying the conditions that led to the child's removal from the parent's custody. *In re R.L.F.*, No. M2008-00050-COA-R3-PT, 2008 WL 3069588, at *4 (Tenn. Ct. App. July 31, 2008) (citing *In re Valentine*, 79 S.W.3d at 547); *see also In re M.J.B.*, 140 S.W.3d 643, 656 (Tenn. Ct. App. 2004); *In re L.J.C.*, 124 S.W.3d 609, 621 (Tenn. Ct. App. 2003).

“The success of a parent’s remedial efforts generally depends on the Department’s assistance and support.” *In re Giorgianna H.*, 205 S.W.3d 508, 518 (Tenn. Ct. App.2006). Accordingly, the Department’s employees have an affirmative duty to utilize their education and training to assist parents in a reasonable way to address the conditions that led to the child's removal and to complete the tasks stated in the plan. *In re Giorgianna H.*, 205 S.W.3d. at 519 (citing *In re A.J.H.*, No. M2005-00174-COA-R3-PT, 2005 WL 3190324, at *9 (Tenn. Ct. App. Nov. 28, 2005) (no Tenn. R. App. P. 11 application filed); *In re J.L.E.*, No. M2004-02133-COA-R3-PT, 2005 WL 1541892, at *14 (Tenn. Ct. App. June 30, 2005) (no Tenn. R. App. P. 11 application filed); *In re D.D.V.*, No. M2001-02282-COA-R3-JV, 2002 WL 225891, at *8 (Tenn. Ct. App. Feb. 14, 2002) (no Tenn. R. App. P. 11 application filed)).

Reasonable efforts are statutorily defined as the “exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family.” Tenn. Code Ann. § 37-1-166(g)(1). The factors the courts are to use to determine reasonableness include: (1) the reasons for separating the parents from their children, (2) the parents’ physical and mental abilities, (3) the resources available to the parents, (4) the parents’ efforts to remedy the conditions that required the removal of the children, (5) the resources available to the Department, (6) the duration and extent of the parents’ efforts to address the problems that caused the children’s removal, and (7) the closeness of the fit between the conditions that led to the initial removal of the children, the requirements of the permanency plan, and the Department’s efforts. *In re Tiffany B.*, 228 S.W.3d 148, 158-59 (Tenn. Ct. App. 2007) (footnote omitted) (citing *In re Giorgianna H.*, 205 S.W.3d at 519).

The requirements of Mother’s permanency plan were related to the reasons that she was removed from the home. Mother had physically abused S.M.R., the physical residence was an unclean and unsafe environment, and Mother had mental health issues. The requirements of the plan included obtaining counseling, acknowledging her role in the abuse of S.M.R., attending and completing domestic violence courses, and participating in homemaker services to help her learn how to maintain a clean and safe home.

Mother had the assistance of several caseworkers over the three years the children were in state custody, and the Department spent over \$100,000 attempting to help her. Mother’s first caseworker, Ms. Hardy, helped her in obtaining parenting classes, attending anger management classes, and supervising visits. As of October 2005, when Ms. Porter became Mother’s caseworker, Mother had not completed individual counseling, anger management classes, domestic violence classes, or obtained a psychological evaluation. Mother’s other caseworkers testified to similar efforts on their part in trying to get Mother into counseling, classes, and providing supervised visits with instruction. Their testimony also demonstrates that Mother never fully complied with the permanency plans and failed to take advantage of opportunities provided her. Mother also ignored the requirement in her permanency plan regarding not allowing a convicted sexual offender to be around her children. We find that the Department demonstrated by clear and convincing evidence that they made reasonable efforts in helping Mother, and we find that Mother did not avail herself of these efforts and failed to meet the requirements of her permanency plan.

Based on the foregoing, we find the evidence sufficient to affirm the ground of substantial noncompliance with the requirements of the permanency plan.

III. ABANDONMENT BY FAILURE TO PROVIDE A SUITABLE HOME

Tennessee Code Annotated §36-1-102(1)(A)(ii) provides for termination when the child

has been removed from the home of the parent(s) . . . as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child-placing agency, that the juvenile court found, or the court where the termination of a parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and for a period of four (4) months following the removal, the department or agency has made reasonable efforts to assist the parent(s) . . . to establish a suitable home for the child, but that the parent(s) . . . have made no reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date;

Tenn. Code Ann. § 36-1-102(1)(A)(ii). While Mother argues that the trial court did not specify which type of abandonment the court terminated under, the order specifically identified the foregoing sub-section.

The minor children were removed from custody in November 2004, and the next month an Agreed Order was entered finding the children dependent and neglected. We previously discussed the reasonable efforts made by the Department in assisting Mother, specifically during the applicable time period of November 2004 to March 2005, when Ms. Hardy was Mother's caseworker. Ms. Hardy assisted Mother in enrolling in parenting classes, which Mother completed. However, efforts made in helping Mother obtain counseling at Centerstone or take her medication were unsuccessful. Additionally, Mother began residing with the sexual offender during this time period, and refused to end her relationship despite the danger he posed to her children. Based on the evidence in the record, we find that there was clear and convincing evidence to terminate Mother's rights under Tenn. Code Ann. § 36-1-102(1)(A)(ii).

IV. PERSISTENT CONDITIONS

The trial court also found that Mother's parental rights should be terminated on the ground of persistent conditions. "Persistent conditions" is statutorily defined as when the child has been removed from the home of the parent by order of a court for a period of six months and:

(A) The conditions that led to the child's removal or other conditions that in all reasonable probability would cause the child to be subjected to further abuse or neglect and that, therefore, prevent the child's safe return to the care of the parent(s) . . . , still persist;

(B) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent(s) . . . in the near future; and

(C) The continuation of the parent . . . and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

Tenn. Code Ann. § 36-1-113(g)(3)(A)-(C) (2008).

The children were initially removed from Mother's home in November of 2004 after the discovery of bruises on S.M.R.'s back and the filthy conditions in which the children resided. The bruises were later attributed to Mother, who pled guilty to felony child abuse based on her abuse of S.M.R. The children were found dependent and neglected children and abused children in an Agreed Order on December 15, 2004.⁴ The trial court found that Mother had failed to acknowledge her abuse of S.M.R. through individual counseling, had been incarcerated three times since the children had been removed from her home, and continually refused to take medication to deal with her mental health issues.

The record demonstrates that the conditions which warranted removal and conditions that would in all reasonable likelihood cause the children to be subjected to abuse or neglect still persist. Mother told Dr. Berryman that she was not responsible for S.M.R.'s bruising, despite having pled guilty to the abuse, demonstrating her failure to acknowledge her role in the abuse. Dr. Berryman testified that she still demonstrates characteristics of bipolar disorder, anxiety, and depression, as well as a personality disorder, and that the course of action for someone like Mother with such a personality disorder would be long-term treatment and counseling. Mother was uncooperative in obtaining counseling or taking her medications, she maintained sporadic attendance in counseling, she admitted that she was only participating in counseling "to please the court system," and she expressed little faith in the benefits of counseling.

Mother's continual involvement with sexual offenders,⁵ and her failure to recognize the dangers they pose to her children is a condition that persisted. Although she claimed she had discontinued her relationship with the known sexual offender, several witnesses at trial disputed her claim. One witness testified that he had seen the man at Mother's home in October, November, and December of 2007, and February of 2008.

⁴The order was not entered until August 1, 2005, though there is no apparent reason in the record for the delay.

⁵Mother had relationships with two men who were convicted sexual offenders.

Another condition that persisted was Mother's inability to maintain a clean and safe residence for her children. Several social workers observed an infestation of bugs, dirty floors, dog feces and urine that were not cleaned up, and the presence of multiple unknown persons within her home. Mother's last caseworker, Ms. Garner, testified that she saw no improvement in Mother's parenting abilities and that her home environment remained unsafe for her children.

The persistence of conditions at issue here is similar to that in the case of *In re B.J.L.*, No. E2007-00596-COA-R3-PT, 2007 WL 2751688, at *10 (Tenn. Ct. App. Sept. 21, 2007). In that case, the mother allowed a known sexual offender in proximity to her children, she stopped attending her counseling sessions, and the children had been in state custody for several years. *Id.* at *1-3. Here, Mother had a long-term relationship with a known sexual offender, she has not addressed her mental health issues, and despite the efforts of the Department she has not remedied the filthy conditions in her home, thus, making it unsafe for the children to return. As we held in *B.J.L.*, the mother's inability to effectively address her mental health issues would subject the children to potential harm, and given that the mother had been unable to remedy these problems for several years, it was unlikely that these conditions would or could be remedied at any point in the near future. *Id.*

We find the evidence sufficient to affirm the finding that Mother abandoned her children due to her failure to provide a suitable home pursuant to Tenn. Code Ann. § 36-1-113(g)(3).

B.

BEST INTERESTS OF THE CHILDREN

If one statutory ground for termination is proven by clear and convincing evidence, a parent's rights may be terminated if it is also determined that termination of the parent's rights is in the children's best interests. *See In re D.L.B.*, 118 S.W.3d at 367. We have affirmed the trial court's finding that four grounds exist for termination of Mother's rights. Therefore, we must now determine whether termination of parental rights is in the best interests of the children.

Under Tennessee Code Annotated § 36-1-113(i), the factors looked to in order to determine what is in the children's best interests are:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child's best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation [*12] or other contact with the child;

(4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;

(5) The effect a change of caretakers and physical environment is likely to have on the child's emotional, psychological and medical condition;

(6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;

(7) Whether the physical environment of the parent's or guardian's home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;

(8) Whether the parent's or guardian's mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or

(9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Tenn. Code Ann. § 36-1-113(i)(1)-(9) (2008). The foregoing list is not exhaustive and the statute does not require that the trial court find every factor to apply in order to find that termination is in the children's best interest. *In re M.A.R.*, 183 S.W.3d 652, 667 (Tenn. Ct. App. 2005).

We find that the termination of Mother's rights was in the best interests of her children. Mother, despite the efforts of the Department and Youth Villages, failed to effect a lasting adjustment of circumstances. Mother has not received the help that she needs for her mental health issues. Mother continued a relationship with a sexual offender despite warnings from her caseworkers and her boyfriend's own family, in clear disregard of her children's safety. Mother made no changes in her circumstances, conduct, or conditions which would make it safe and in the children's best interests to return home.

There also appears to be no meaningful relationship with the children. Testimony showed that both children often acted disruptive following visits with their Mother, and after visitation was discontinued, their behavior improved. Mother pled guilty to child abuse based upon her striking S.M.R., the incident which led to their initial removal from her home. In therapy, K.M.R. referred to Mother as the "mommy monster," and S.M.R. referred to her Mother's home as "dangerous."

While no direct evidence was introduced at trial regarding the effect that a change in caretakers would have on the children, there is evidence regarding the issues that the children face in their lives and their need for stability. Both children have been diagnosed with mental health

problems. K.M.R. was initially diagnosed with generalized anxiety disorder, which later altered into adjustment disorder with chronic mixed disturbance of emotions and conduct. S.M.R. was also diagnosed with adjustment disorder. S.M.R. has made progress and no longer requires counseling, however, K.M.R. still requires counseling and visits to a specialist due to her weight. The testimony showed that the children have bonded with their foster parents and their foster brother. Additionally, the therapist for the children testified that it was “impossible to put the amount of importance in words” of the children’s need for security and stability, which she saw being provided by their foster parents.

The physical environment provided by Mother is not healthy or safe. Testimony demonstrated that Mother allowed a sexual offender to reside in her home, and had a physical relationship with another man who was a sexual offender. Mother also allowed a constant stream of visitors into her home, once allowing a homeless couple to shower in her apartment. Another guest of Mother’s stole money out of her social worker’s purse. Mother has also failed to provide child support, and was found to be in contempt twice due to her failure to pay.

The best interests of the child are to be determined from the perspective of the child rather than the parent. *See L.H.*, No. M2007-00170-COA-R3-PT, 2007 WL 2471500, at *7 (Tenn. Ct. App. Aug. 31, 2007) (citing *White v. Moody*, 171 S.W.3d 187, 194 (Tenn. Ct. App. 2004)). Viewing the evidence from the children’s perspective, the record shows by clear and convincing evidence that the termination of Mother’s parental rights is in the children’s best interest.

C.

CONFLICT OF INTEREST

As an additional issue, Mother contends the Department had a conflict of interest because one of the children’s foster parents was an employee of the Department. We find this contention without merit because Mother presents no evidence of any adverse action taken against her or of any prejudice she suffered as a consequence of the alleged conflict of interest.

Mother was informed at the initial Child and Family Team Meeting of the identify of the foster parents and of the fact that one of them was an employee of the Department. In fact, the matter was discussed at the initial meeting and no objection was made by Mother. The issue was not raised until Mother’s mentor at Living Well Ministries expressed her concern of a possible conflict of interest. In response to the mentor’s concern, the Department promptly assigned the management of Mother’s case to an independent agency, Youth Villages.

The Department has no policy that forbids its employees from serving as foster parents. There is no evidence that Mother was prejudiced due to the fact one of the foster parents was an employee of the Department. We also find the Department’s response was appropriate when the concern was expressed. Based on the foregoing, we find no merit to Mother’s unsubstantiated contention that she was prejudiced due to the alleged conflict of interest.

IN CONCLUSION

The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against the Department of Children's Services.

FRANK G. CLEMENT, JR., JUDGE